

FILED

AUG 03 2020

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMACARMELITA REEDER SHINN, CLERK  
U.S. DIST. COURT, WESTERN DIST. OKLA.  
BY PRB, DEPUTY

Name (under which you were convicted): <u>LUTHER BARNETT</u>	CIV-20-757-JD	Docket or Case No.: <u>CRF-88-2006</u>
Place of Confinement : <u>JOSEPH HARP CORRECTIONAL CTR</u>	Prisoner No.:	
Petitioner (include the name under which you were convicted)  <u>LUTHER BARNETT</u>	Respondent (authorized person having custody of petitioner) v. <u>STATE OF OKLAHOMA FEDERAL BUREAU OF PRISONS UNITED STATES OF AMERICA</u>	
The Attorney General of the State of: <u>UNITED STATES OF AMERICA</u>		

## PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2254

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

OKLAHOMA COUNTY DISTRICT COURT

(b) Criminal docket or case number (if you know):

CRF-88-2006

2. (a) Date of the judgment of conviction (if you know):

MARCH 29, 1989

(b) Date of sentencing:

MARCH 29, 1989

3. Length of sentence:

100 yrs

4. In this case, were you convicted on more than one count or of more than one crime?  Yes  No

5. Identify all crimes of which you were convicted and sentenced in this case:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. (a) What was your plea? (Check one)

<input checked="" type="checkbox"/> (1)	Not guilty	<input type="checkbox"/> (3)	Nolo contendere (no contest)
<input type="checkbox"/> (2)	Guilty	<input type="checkbox"/> (4)	Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? NOT GUILTY

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(c) If you went to trial, what kind of trial did you have? (Check one)

Jury  Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes  No

8. Did you appeal from the judgment of conviction?

Yes  No

9. If you did appeal, answer the following:

(a) Name of court: N/A

(b) Docket or case number (if you know): \_\_\_\_\_

(c) Result: \_\_\_\_\_

(d) Date of result (if you know): \_\_\_\_\_

(e) Citation to the case (if you know): \_\_\_\_\_

(f) Grounds raised: \_\_\_\_\_

(g) Did you seek further review by a higher state court?  Yes  No

If yes, answer the following:

(1) Name of court: N/A

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result (if you know): \_\_\_\_\_

(5) Citation to the case (if you know): \_\_\_\_\_

(6) Grounds raised: \_\_\_\_\_

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(h) Did you file a petition for certiorari in the United States Supreme Court? \_\_\_\_\_

Yes  No

If yes, answer the following:

(1) Docket or case number (if you know): N/A \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?  Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes  No

(7) Result: NON S \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes  No

(7) Result: None

(8) Date of result (if you know): \_\_\_\_\_

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: None

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes  No

(7) Result: None

(8) Date of result (if you know): \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition:  Yes  No  
 (2) Second petition:  Yes  No  
 (3) Third petition:  Yes  No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

THIS IS A FEDERAL CASE ONLY  
NO STATE INVOLVEMENT

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**CAUTION:** To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

**GROUND ONE: JURISDICTIONAL CHALLENGE**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

WE CITE THE SUPREME COURT RULING IN MC GIRT V OKLAHOMA NO 18-9524  
 MAY 11, 2020. 18 U.S.C. § 1153(A) "INDIAN COUNTRY" INCLUDES ALL  
 LAND WITHIN THE LIMITS OF ANY INDIAN RESERVATION UNDER THE  
 JURISDICTION OF THE UNITED STATES GOVERNMENT.

MY CRIME WAS COMMITTED WITHIN INDIAN COUNTRY MAKING MY CASE  
 A FEDERAL CASE ONLY.

(b) If you did not exhaust your state remedies on Ground One, explain why: FEDERAL CASE ONLY;

WE ALSO CITE MURPHY V ROYAL U.S. COURT OF APPEALS FOR THE TENTH  
 CIRCUIT NOS 07-7068 & 15-7041 AUG 8, 2017, PATTI PALMER GHEZZI  
 ASST. FEDERAL PUBLIC DEFENDER; WHEN THE MAJOR CRIMES ACT APPLIES,  
 JURISDICTION IS EXCLUSIVELY FEDERAL, SEE NEGENSOTT V SAMUELS, 507  
 U.S. 99, 103 (1993). MY CASE FALLS UNDER MAJOR CRIMES ACT  
 MAKING JURISDICTION FEDERAL

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: FEDERAL ISSUE

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

NONE

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

Yes  No

(4) Did you appeal from the denial of your motion or petition?

Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

NONE

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

FEDERAL CASE

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

NONE

GROUND TWO:

INFFECTIVE ASSISTANCE OF COUNSEL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE SUPREME COURT HAS RECOGNIZED THAT A LEGAL FRAMEWORK FOR

EVALUATING A GIVEN TYPE OF CLAIM CAN CONSTITUTE CLEARLY ESTABLISHED LAW UNDER § 2254 (D) (1). FOR EXAMPLE, THE COURT'S DECISION IN STRICKLAND V WASHINGTON, 466 U.S. 668 (1984), ANNOUNCED A TWO-PART TEST FOR EVALUATING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL, SEE ID. AT 687

(b) If you did not exhaust your state remedies on Ground Two, explain why: FEDERAL CASE ONLY.  
 (DISCUSSING PERFORMANCE AND PREJUDICE), AND THE COURT HAS SINCE SAID THIS FRAMEWORK CONSTITUTES CLEARLY ESTABLISHED FEDERAL LAW SEE WILLIAMS, 529 U.S. AT 391 SEE MURPHY V ROYAL.

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No  
 (2) If you did not raise this issue in your direct appeal, explain why: A FEDERAL ISSUE NOT A STATE ISSUE -

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

None

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

THIS IS A FEDERAL CASE ONLY EXCLUSIVE OF STATE ACTORS.

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two : NONE UNTIL NOW WE

ATTACK OUR STATE SENTENCE

**GROUND THREE:**

DOUBLE JEOPARDY - PROHIBITED BY THE FIFTH AMENDMENT

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1847, THE FACT OF BEING PROSECUTED OR SENTENCED TWICE FOR SUBSTANTIALLY THE SAME OFFENSE.

DOUBLE JEOPARDY CLAUSE (1928), THE FIFTH AMENDMENT PROVISION STATING, " NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE

(b) If you did not exhaust your state remedies on Ground Three, explain why: FEDERAL CASE NOT A STATE CASE.

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: N/A FEDERAL ISSUE

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

NIA

Name and location of the court where the motion or petition was filed:

NONE

Docket or case number (if you know):

NIA

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

Yes

No

(4) Did you appeal from the denial of your motion or petition?

Yes

No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes

No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

NONE

Docket or case number (if you know):

NIA

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

NONE

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

FEDERAL ISSUE ONLY

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

NONE

**GROUND FOUR:** NONE

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

NONE

(b) If you did not exhaust your state remedies on Ground Four, explain why:

*N/A*

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes

No

(2) If you did not raise this issue in your direct appeal, explain why:

*N/A*

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

*N/A*

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

Yes

No

(4) Did you appeal from the denial of your motion or petition?

Yes

No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes

No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

*N/A*

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

*N/A*

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: *None*

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction?  Yes  No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: *THEY DO NOT HAVE JURISDICTION*

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

*No*

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition?  Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

*N/A*

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging?  Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: JO ANN ATKINS

(b) At arraignment and plea: SELF

(c) At trial: JO ANN ATKINS

(d) At sentencing: JO ANN ATKINS

(e) On appeal: NO APPEAL

(f) In any post-conviction proceeding: NONE

(g) On appeal from any ruling against you in a post-conviction proceeding: NONE

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?  Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

NONE

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?  Yes  No *N/A*

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

IN OKLAHOMA "ISSUES OF SUBJECT JURISDICTION ARE NEVER WAIVED AND CAN THEREFORE BE RAISED ON A COLLATERAL APPEAL." WALLACE V STATE, 935 P.2d. 366, 372 (OKLA CRIM APP 1997);

SEE TRIPLET V FRANKLIN, 365 F. APP'X 86, 95 (10TH CIR 2010) (UNPUBLISHED) RECOGNIZING THAT, IN OKLAHOMA, ISSUES OF SUBJECT MATTER JURISDICTION ARE NOT WAIVABLE AND CAN BE RAISED FOR THE FIRST TIME IN COLLATERAL PROCEEDINGS.

SEE MURPHY V ROYAL

MAGNAN V STATE, 207 P.3d. 397, 402 (OKLA CRIM. APP. 2009), CONSIDERING INDIAN COUNTRY JURISDICTIONAL CHALLENGE AND EXPLAINING SUBJECT MATTER JURISDICTION MAY BE CHALLENGED AT ANYTIME.

UNITED STATES V VANCHASE, 137 F.3d. 579 (8TH CIR. 1998), JURISDICTION IS SUFFICIENT UNDER THE MAJOR CRIMES ACT, IF ANY PART OF THE OFFENSE TOOK PLACE IN INDIAN COUNTRY; AS DID THE PETITIONERS CRIME.

KIDNAPPING - ACCORDING TO 18 U.S.C. § 1201, WHOEVER ILLEGALLY CONFINES, DECOYS, KIDNAPS, ABDUCTS, HOLDS FOR RANSOM OR PRIZE CAN BE CONSIDERED A CRIMINAL.

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that: THE STATE OF OKLAHOMA DID NOT, AND DOES NOT, HAVE JURISDICTION, ACCORDING TO MCGRT V OKLAHOMA. THEREFORE THEY ARE GUILTY OF KIDNAPPING ALL OKLAHOMA INMATES. THIS COURT IS AND WILL CONTINUE TO BE CULPABLE IF THERE

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

RULINGS FAVOR OKLAHOMA WITHIN "INDIAN COUNTRY".

NO PERSON SHALL BE HELD TO ANSWER FOR ANY CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY; THIS DIDN'T HAPPEN EITHER FOR PETITIONER

PETITIONER HAS SERVED SEVERAL YEARS AT A STATE PRISON SITUATED ON FEDERAL GROUNDS THIS IS NOT LEGAL OR ETHICAL SOMEONE NEEDS TO BE HELD ACCOUNTABLE FOR THIS BEHAVIOR.

FALSIFYING A RECORD — THE CRIME OF MAKING FALSE ENTRIES OR OTHERWISE TAMPERING WITH A PUBLIC RECORD WITH THE INTENT TO DECEIVE OR INJURE OR TO CONCEAL WRONGDOING 18 U.S.C. 4  
ISOLE MODEL PENAL CODE § 224.4; NO STATE JURISDICTION AND EVERYONE INVOLVED HAS KNOWN ABOUT IT FOR YEARS.

WE NOW CITE THE KENNEDY ORDER FILED IN CLEVELAND COUNTY IN CR-72-187 DEC 7, 2015, JUDGE RAYTON FOUND KENNEDY'S LIFE SENTENCE WAS DISCHARGED AFTER 22.5 YEARS. HOWEVER THE STATE OF OKLAHOMA HELD MR. KENNEDY FOR 43 YEARS; OVERSIGHT NOTE MORE OKLAHOMA CORRUPTION.

EX PARTE HEARING WHICH A COURT INQUIRES AS TO THE LEGITIMACY OF A PRISONER'S CUSTODY. A PROCEEDING TO DETERMINE WHETHER THE COURT THAT IMPOSED SENTENCE ON THE DEFENDANT HAS JURISDICTION AND AUTHORITY TO DO SO, OR WHETHER THE DEFENDANT'S SENTENCE HAS EXPIRED; OBVIOUSLY IT HAS EXPIRED.

EXCLUSIONARY RULE; ANY RULE THAT EXCLUDES OR SUPPRESSES EVIDENCE, HEARSAY HAS LONG BEEN INADMISSIBLE UNDER THE EXCLUSIONARY RULE THESE ALLEGATIONS SUFFICIENTLY CHARGE A DERIVATION OF RIGHTS GUARANTEED BY THE FEDERAL CONSTITUTION, AND, IF PROVEN, WOULD ENTITLE PETITIONERS RELEASE FROM THEIR PRESENT CUSTODY.

which NEEDS TO HAPPEN IMMEDIATELY !!

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: <sup>①</sup> IMMEDIATE DISCHARGE FROM PRISON

CREDIT FOR TIME SERVED:

② OR TURN OVER TO FEDS FOR FEDERAL SENTENCING

or any other relief to which petitioner may be entitled.



Signature of Petitioner or Attorney (if any)

VERIFICATION

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 7-28-2020 (month, day, year).

Executed (signed) on 7-18-2020 (date).



Signature of Petitioner or Authorized Person Under 28 U.S.C. § 2242

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

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